



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/149858

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on July 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied Petitioner's application for disability based Medicaid benefits.

NOTE: The record was held open until July 31, 2013, to give Petitioner an opportunity to submit additional medical records. On July 25, 2013, the Division received a letter from a [REDACTED] Rivera, APNP from Aurora St. Luke's Medical Center. It has been marked as Exhibit 2 and entered into the record. No other documents were received by the designated deadline.

Petitioner also inquired if DHA had an open appeal of concerning the termination of his Medicaid benefits under a presumptive disability. DHA has no such appeal open for Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: DDB by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner filed an application for Medicaid benefits under a presumptive disability on January 29, 2013. (Testimony of Petitioner, DDB file)
3. On February 4, 2013, Petitioner filed an application for regular disability-based Medicaid benefits, asserting that he has become disabled by a heart condition. (Id.)
4. Petitioner filed an application for Social Security Disability Benefits (SSDI) on December 5, 2012. In his application, Petitioner asserted that he became disabled by a heart condition. (DDB file; Testimony of Petitioner)
5. On April 19, 2013, the DDB sent Petitioner a notice indicating that his application for Medicaid benefits was denied. (DDB file)
6. On April 30, 2013, Petitioner filed a request for reconsideration. (DDB file)
7. On May 31, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI benefits. (Id.)
8. On June 4, 2013 the DDB denied Petitioner's request for reconsideration and on June 6, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
9. Petitioner has since filed an appeal with the SSA concerning the denial of SSDI benefits. (Testimony of Petitioner)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for medical assistance, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for both Medicaid benefits and Social Security Disability Income benefits alleging the same disabling medical condition and the Medicaid application is not more than 12 months after the most recent SSA determination. However, Petitioner asserts that his condition has changed and that he has reapplied to the SSA for reconsideration and is awaiting the outcome of that appeal.

To support his contention that his condition changed, Petitioner submitted a letter from [REDACTED] A. Rivera, an Advanced Practice Nurse Practitioner. Regrettably, the letter from Ms. Rivera does not indicate whether Petitioner's condition has changed since the time the SSA denied Petitioner's application for Social Security Disability Income. Because, there is insufficient information in the record to establish that Petitioner's condition has changed. The Federal SSA decision finding Petitioner to be not disabled is binding.

Petitioner should note that effective 10/1/13, a person can apply for the Affordable Care Act (Obamacare) subsidy and go insurance shopping by either:

- 1) Calling [REDACTED]
- Or
- 2) Going on-line to www.healthcare.gov

Petitioner should note that no applications will be accepted before October 1, 2013, and that there is likely to be limited information available about the subsidy before that time.

CONCLUSIONS OF LAW

The Disability Determination Bureau (DDB) correctly denied Petitioner's request for disability-based Medicaid.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

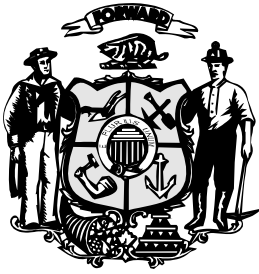
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of August, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 1, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau